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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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VIA ECF

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square, New York, NY 10007

Re: *Kane, et al v. de Blasio, et al*
Docket 21 civ 7863

Dear Judge Caproni,

By this letter motion, Plaintiffs respectfully request that this Court lift the stay and either acknowledge the amended complaint filed as a matter of course at ECF 74, or allow them to file a new amended complaint as a matter of course and permit the filing of the attached motion by order to show cause to certify a class.

The Second Circuit remanded the case back to the district court and filed a mandate on November 30, 2021. Plaintiffs cannot wait any longer to certify a class, as there are members of the class, similarly situated, who were also subjected to the discriminatory policies adopted by the City in implementing its mandate who are not being offered the same relief as Plaintiffs. As noted by the Second Circuit, Plaintiffs are required to file their motion for class certification in order to extend the relief to all similarly situated members of the proposed class. Preventing them from filing, when there is no appeal pending that would justify staying this matter, prejudices them and violates their constitutional right to access courts.

It is urgent that this motion be filed without any further delay. Defendants have advanced no legal argument for why the Plaintiffs should be barred from accessing courts at this time.

Respectfully Submitted,

/s/ Sujata S. Gibson
Counsel for the Plaintiffs

Cc: All counsel via ECF

21-CV-7863; 21-CV-8773

These two cases remain stayed pending the conclusion of the proceedings before the citywide panel. *See* Endorsement, 21-CV-7863, Dkt. 80; Endorsement, 21-CV-8773, Dkt. 40. The Court sees no reason to lift the stay at this time.

By no later than **Friday, January 7, 2021**, the parties in both 21-CV-7863 and 21-CV-8773 must file a joint letter proposing next steps in this litigation. The joint letter should, at a minimum, address the following topics:

1. The status of the administrative proceedings before the citywide panel as to the named Plaintiffs in both cases.
2. The status of the administrative proceedings before the citywide panel as to other DOE employees who have unsuccessfully sought religious exemptions. *See* Appendix, Second Circuit Opinion, 21-CV-7863, Dkt. 77 at 47.
3. Whether Plaintiffs are requesting leave to file amended complaints to incorporate the findings of the citywide panel as to the named Plaintiffs. If Plaintiffs request such leave, they should propose a deadline for the filing of such an amended complaint. Plaintiffs should also indicate whether they will plan at that time to include class allegations in their amended complaints. If so, the parties should propose a briefing schedule on any motion for class certification.
4. Whether the parties oppose the consolidation of 21-CV-7863 and 21-CV-8773 pursuant to Rule 42 of the Federal Rules of Civil Procedure. If any party opposes, the parties should propose a briefing schedule on the issue, with the objecting party or parties filing the opening brief.
5. Whether Defendants plan to challenge Plaintiffs' standing to pursue their as applied challenges, and if so, a proposed briefing schedule on the subject with Defendants filing the opening brief. *See* Second Circuit Opinion at 25-26 n.15; Order, 21-CV-7863, Dkt. 60 at 1-2.
6. Whether either party is seeking a stay in discovery and if so, on what basis.
7. Whether the parties believe a Rule 16 conference should be scheduled or whether there are threshold issues to be resolved first.
8. Any other information that parties believe may assist the Court in advancing these cases to resolution.

If the parties cannot agree on a joint proposal with respect to any of the topics listed above, they should include their respective positions as to that issue.

The Clerk of Court is respectfully directed to close the open motion at docket entry 83 in 21-CV-7863.

SO ORDERED.



Date: December 10, 2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE